



California Fair Political Practices Commission

September 13, 1989

Walt Ekard
24143 Rutherford Rd.
Ramona, CA 92065

Re: Your Request for Advice
Our File No. A-89-411

Dear Mr. Ekard:

You have requested advice on behalf of Supervisor Brian P. Bilbray concerning the campaign provisions of the Political Reform Act of 1974.¹ As I explained in our telephone conversation of September 12, 1989, the advice in this letter may be affected by an upcoming court decision. Please contact this office in October to see if this advice has changed.

QUESTIONS

1) May Supervisor Bilbray use campaign funds collected prior to January 1, 1989, for future campaign expenses and current officeholder expenses?

2) Is a separate bank account required for funds used to pay officeholder expenses?

3) May campaign funds in one bank account which is controlled by Supervisor Bilbray be transferred to another bank account also controlled by him? As an example, if Supervisor Bilbray decided to run for Congress in 1990, could he set up a separate campaign account and transfer any or all funds existing at that time in his supervisorial campaign account?

CONCLUSIONS

1) As long as campaign funds received prior to January 1, 1989, were received within the contribution limits set by Proposition 73 (see enclosed Interim Information Manual on Proposition 68 and Proposition 73, dated March 1989, page 8) and were not received from other candidates' or officeholders' campaign accounts, Supervisor Bilbray may designate those funds for use in a future campaign by filing Forms 501 and 502. Supervisor Bilbray may use any funds received prior to January 1, 1989, for current officeholder expenses.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Walt Ekard
Page Two

This advice may change after the aforementioned court decision. (Service Employees International Union v. Fair Political Practices Commission, No. CIVS 89-0433 LKK-JKM, May 15, 1989.)

2) Officeholder expenses may be paid from either an account that existed prior to January 1, 1989, an account established to raise funds to pay for current officeholder expenses, or from an account designated for re-election to the office currently held. A separate bank account specifically for officeholder expenses is not required.

3) Supervisor Bilbray may transfer funds between his controlled committee accounts, except for any account which holds "restricted" funds (i.e. funds received prior to January 1, 1989) which were received outside the limits set by Proposition 73 or were received from other candidates' or officeholders' campaign accounts. However, in your example of Supervisor Bilbray running for Congress, please note that the State of California does not regulate campaigns for federal offices. You may contact the Federal Elections Commission at (800) 424-9530 for additional information concerning federal elections.

ANALYSIS

In the text of Proposition 73, Section 85306 stated that "any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office." (Emphasis added.) However, a May 15, 1989, the U.S. District Court of the Eastern District of California issued a preliminary injunction which enjoined the Commission from enforcing this provision as to those funds raised within the contribution limits of Proposition 73. (Service Employees International Union, AFL-CIO, CLC; et al., v. Fair Political Practices Commission, No. CIVS 89-0433 LKK-JFM, May 15, 1989.) Another hearing in that case was held August 11, 1989. A decision is expected shortly.

Regulation 18536.1 (copy enclosed), which provides a methodology for determining which funds raised prior to January 1, 1989, may be used to support a candidacy after that date, was declared invalid by the Los Angeles County Superior Court on February 8, 1989. Although this regulation is still invalid, you may use it as a guideline for determining whether funds held by Supervisor Bilbray on January 1, 1989, may be used for a future candidacy.

Regulation 18536.2 (copy enclosed) provides that payment of officeholder expenses is not an expenditure to "support or oppose a candidacy for elective office," and therefore may be paid from funds received prior to January 1, 1989.

Walt Ekard
Page Three

Regulation 18525 (copy enclosed) allows an incumbent elected officer to pay for officeholder expenses from the campaign bank account established for election to a future term of office, as long as the officeholder expenses are in connection with the specific office for which the account was established.

In addition, the above-referenced United States District Court preliminary injunction also enjoined the Commission from enforcing that portion of Section 85304 which prohibits the transfer of funds between one candidate's separate campaign committees.

We have placed your name on our mailing list to receive the monthly FPPC Bulletin. This publication will provide you with any updates concerning Proposition 73. However, please note that the Commission is not the filing officer for the Form 410, nor any of Supervisor Bilbray's campaign disclosure statements, other than the Form 501 (Candidate Intention) and the Form 502 (Campaign Bank Account).

If you have any additional questions, please contact me at (916) 322-5662.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Kevin S. Braaten-Moen
Political Reform Consultant

Enclosures

Walter Francis Ekard

FPPC

Jul 5 9 58 AM '89

June 25, 1989

Fair Political Practices Commission
P.O. Box 944001
Sacramento, Ca. 94244-4001

Dear Sir or Madam:

Pursuant to my understanding of the current FPPC interpretation of Propositions 68&73, I am submitting as treasurer on behalf of Supervisor Brian P. Bilbray the enclosed Form 501 & 502 and Form 410 for purposes of identifying the specific election for which the Supervisor's current campaign account is to be used.


Based on my conversations with representatives of the FPPC and the San Diego County Registrar of Voters, it is my understanding that the funds Supervisor Bilbray has currently on account, are usable for his future campaign and officeholder expenses even though the funds were collected prior to January 1, 1989.

It is my further understanding that no separate "officeholder" account is necessary for expending funds currently in the campaign account for typical officeholder expenses. Moreover, as I understand the most recent Court and FPPC interpretation, campaign funds can be moved from one campaign account to another at the discretion of the candidate. For example, if Supervisor Bilbray decided to run for Congress in 1990, he could set up a separate, second campaign account and transfer in any or all funds existing at that time in his Supervisor's campaign account.

As the terms and interpretation of Propositions 68 & 73 remain in limbo, it is important that I be made cognizant of any misunderstandings or misconceptions about the rules that become clear to your office regarding Supervisor Bilbray's activity with the FPPC. It is our fervant desire to remain completely consistant with the rules and regulations as determined by the voters. To that end I would respectfully request that you notify me immediately if the material submitted now or in the future on behalf of Supervisor Bilbray is incorrect or inconsistant with the law. I can be reached at 756-1174 or 789-6373 (home).

Thank you in advance for your anticipated cooperation.

Very truly yours,


Walt Ekard
Treasurer



California Fair Political Practices Commission

July 14, 1989

Walter F. Ekard
Treasurer
24143 Rutherford Road
Ramona, CA 92065

Re: Letter No. 89-411

Dear Mr. Ekard:

Your letter requesting advice under the Political Reform Act was received on July 12, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Jeanne Pritchard".

Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh